

# CHESHIRE EAST

## COUNCIL

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**Date of meeting:** 24<sup>th</sup> February 2009

**Report of:** Borough Solicitor

**Title:** Adoption of the Constitution and the Council's decision-making and overview and scrutiny arrangements

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### **1.0 Purpose of Report**

- 1.1 For the Council to formally adopt a Constitution, which will take effect on Vesting Day and which will set out the Council's decision-making and overview and scrutiny arrangements.

### **2.0 Decision Required**

- 2.1 That Council agree the recommendations of the Governance and Constitution Committee which are set out in Appendix 1 to the report and which are reflected in the body of the report.
- 2.2 That Council adopt the Constitution, as set out in the appendices to this report, amended where required to reflect the recommendations of the Governance and Constitution Committee, this to take effect on Vesting Day.
- 2.3 That the Shadow Council's existing Member Code of Conduct and Proper Officer provisions continue to have effect on Vesting Day and thereafter.
- 2.4 That the Borough Solicitor shall have delegated authority, in consultation with the political group whips to make such additions and changes to the Council's Constitution as he considers are necessary in order to ensure the delivery of efficient and effective local authority functions with effect from Vesting Day.

### **3.0 Financial Implications for Transition Costs**

- 3.1 There are no such financial implications over and above those which may be expected of any transition to unitary local authority status.

### **4.0 Financial Implications 2009/10 and beyond**

- 4.1 There are no such financial implications over and above those which have been anticipated as part of the preparations for full unitary local authority powers and functions which will take effect on Vesting Day.

## **5.0 Legal Implications**

- 5.1 The Council must have a Constitution which sets out details of the way in which the Council will operate, and its decision-making arrangements. The remainder of legal implications are set out in the body of this report and have been taken into account in the proposed content of the Constitution.

## **6.0 Risk Assessment**

- 6.1 By adopting a Constitution, the Council will be complying with the law. No risks have been identified by officers or Members during the process of bringing recommendations to Council in respect of the proposed adoption of the Constitution.

## **7.0 Background**

- 7.1 During the life of the Shadow Council, many reports have been taken to the Shadow Council's Cabinet, Overview and Scrutiny Committees and finally, to the Governance and Constitution Committee.
- 7.2 The product of these reports is appended to this report and, once adopted by Council, will comprise Cheshire East Council's Constitution. This will take effect on Vesting Day.
- 7.3 In order to gain a full picture of the Council's decision-making arrangements, the appendices to this report, which contain details of the whole of the proposed decision-making and scrutiny arrangements, must be considered in detail. However, it is appropriate for a brief summary to be provided in the body of this report. This should not, however, be taken as a comprehensive record of the very detailed arrangements which will apply with effect from Vesting Day. It should be noted that the appended details take into account the recommendations of the Governance and Constitution Committee. This will enable Members to see the arrangements in context, as proposed by the Committee.
- 7.4 The powers of full Council: the powers of Council are contained in legislation, further details are contained at Appendix 2. Members are referred to a separate report on the Council agenda which deals with the Budget and Policy Framework. The powers of Cabinet are also included in this Appendix.
- 7.5 Local Choice Functions: the legislation gives local authorities some choice over whether certain functions are performed by Cabinet, Council or its committees. Appendix 4 sets out the recommendations of the Governance and Constitution Committee in respect of these functions.
- 7.6 Executive functions: Appendix 3 sets out in detail the portfolio areas of responsibility of each Cabinet Member.

In summary, the Governance and Constitution Committee recommends that Individual Cabinet Members should be empowered to make all

executive decisions in respect of their own portfolio area of responsibility  
**except:**

- Those decisions delegated to an officer (unless the officer refers the decision to the executive member)
- Where the Leader, or the Cabinet, has delegated the decision-making power to a Committee of the Cabinet
- Where the decision is a Key Decision as defined in this Constitution.
- A decision or recommendation on strategy or policy
- A decision that is a departure from any agreed Corporate objective or the approved Budget
- Where the Leader (before a decision has been taken) requires the decision to be taken collectively by the Cabinet
- A decision which any Cabinet Member has asked (before a decision has been taken) to be taken collectively by the Cabinet

The decisions must be made in discussion with one or more of the following as appropriate:

- Chief Executive
- Appropriate Director or Head of Service
- Monitoring Officer
- Chief Finance Officer
- Where there are minor cross-cutting implications - other appropriate Portfolio Holder(s)

The Cabinet Member must take into account professional, legal and financial advice.

If any of the above officers give advice that the decision would fall within one of the relevant exceptions above then the decision in question shall be a decision for the Cabinet acting collectively.

Where it is not clear in which Portfolio an issue sits, the Leader shall decide.

An appropriate audit-trail of the decision-making process will be produced.

It should also be noted that the Governance and Constitution Committee recommended to Council that the “Strong Leader” model of executive arrangements should apply with effect from Vesting Day.

**7.7 Powers of Cabinet:** The Cabinet is empowered to make all executive decisions, together with decisions upon those Local Choice matters which Council has decided should be made by the Cabinet. Even where the Council’s Executive Arrangements provide for executive decisions to be made by individual Cabinet Members, these may be referred to the collective Cabinet for decision by any Cabinet Member.

7.8 Powers of officers: The Council will operate a scheme of delegation by exception in relation to executive and non-executive matters. Wide ranging operational powers are delegated to “Chief Officers” (Directors, Service Heads, etc and those duly authorised by them) subject to checks and balances in the scheme which constrain the exercise of those powers on the basis of the nature of the decision in question (value/impact) and by the application of a suite of Council policies, procedures rules and codes of practice in different subject areas. Appendix 5 contains the Officer Scheme of Delegation which begins by setting out the principles of, and checks/balances that apply, to the general delegations. It continues to make a number of general delegations in respect of operational needs common to all services, and then makes bespoke provision to specific officers based upon the needs of individual service areas.

7.9 Planning Board and Committees: Council is recommended to appoint a Planning Board which will have three main roles:

- The determination of major planning applications.
- Overview and control of the planning workload.
- Consultation and feedback regarding Planning

The Board will approve a series of protocols, which will govern the way in which planning matters are dealt with, as well as setting the rules for public engagement in the planning process.

Two Planning Committees will be appointed to deal with planning applications which do not have strategic implications but which merit public consideration.

There will be an approximate 50:50 split of all planning applications between the north and the south of the borough and, therefore, there will be a northern and a southern Planning Committee. These Committees will have flexibility to deal with applications from outside of their normal geographical work-areas in order to be responsive to variation in workloads.

The scheme of delegation contained at Appendix 2 directs the majority of smaller, less complex applications towards Officers although applications may be referred up to committee by officers or Members.

The scheme of delegation implements Good Practice Guidance issued by IDeA's Planning Advisory Service 2006.

The Planning Protocol, recommended to Council by the Governance and Constitution Committee is also included at Appendix 2.

7.10 Licensing Board and Committees and Environmental Health:

Council has already established both a full Licensing Committee and Sub-Committees to discharge the licensing functions of the authority, including alcohol and entertainment licensing, and Environmental Health functions relating to registration matters.

The full Licensing Committee will deal with policy matters and matters referred to it from either officers or the sub-committees.

In accordance with the provisions of the Licensing Act 2003, a sub-committee drawn from the full Committee is proposed to be established to deal with matters under the 2003 Act and the Gambling Act 2005.

A further sub-committee would be established to deal with 'general' licensing and registration matters (including taxi licensing, street trading and the Environmental Health registration functions).

Details of the Committee's terms of reference and officer delegations are contained in Appendix 2

7.11 Overview and Scrutiny: Appendix 2 also contains details of the Council's proposed Overview and Scrutiny (O&S) structure, comprising five committees with recommended terms of reference.

These recommendations reflect:

- The need for robust and constructive O&S, focussing not just on post decision scrutiny and review ("holding the Cabinet to account") but also carrying out an advisory role in policy development (the "overview" function).
- The increasing demands of external scrutiny, not only of the NHS, but also scrutiny of Local Area Agreement partners and Crime and disorder Partnerships
- New roles for O&S, including Local Petitions and Councillor's Call for Action.
- The need for O&S to reflect the aspirations and concerns of the public, thereby contributing to the Council's priorities on neighbourhood working and community engagement.
- The provision of sufficient officer support and resources to ensure the O&S arrangements operate effectively.

It is intended that the O&S structures should be clear and readily understood by the whole organisation and by outside bodies. The proposed five committees will between them relate to the Cabinet and specifically as appropriate to the nine individual portfolios. The Committees are:

Children and Families  
Health and Adult Social Care  
Environment and Prosperity  
Sustainable Communities  
Corporate Scrutiny

Health and Adult Social Care will fulfil the legally required task of NHS Scrutiny, together with review and advice on jointly commissioned services in Adult Social Care. External scrutiny of the LAA, Crime and Disorder and Community Strategies will be undertaken by the Sustainable Communities Committee. Corporate Scrutiny Committee will review the three “corporate” portfolios, and Cabinet and organisational performance as a whole.

Any of the Committees may be invited to provide advice and recommendations on the development and updating of the Authority’s policies. They may also appoint “Task and Finish” Panels to carry out more intensive reviews of specific issues. O&S is empowered to make recommendations to the Cabinet, other Committees and external organisations for action/improvement where appropriate. The Committees’ detailed terms of reference are set out in Appendix 2.

7.12 Miscellaneous Regulatory Functions: Appendix 2 also contains details of the Council’s proposed decision-making arrangements in respect of regulatory functions. These include Public Rights of Way and Trading Standards and Registrations.

7.13 Procedural Rules and other constitutional documents: A number of additional documents will form part of the Council’s Constitution. These will assist Members, members of the public and officers to understand the way in which the Council works and makes its decisions. These are contained at Appendix 6.

7.14 Member Code of Conduct and “Proper Officer” provisions: The Local Government Act 2000 and related Regulations require all Councils to adopt a Code of Conduct for Members. In 2007 the Government published the latest version of a Model Code based on ten underlying principles. In May 2008 the Shadow Council considered and adopted the Code and principles and, individually, Members undertook to abide by them. Members are familiar with their provisions regarding general standards of conduct and the disclosure of personal and prejudicial interests.

Council is recommended to adopt the Shadow Council’s existing Member Code of Conduct, this to take effect on Vesting Day and to continue to have effect thereafter.

The Shadow Council has also agreed “Proper Officer” provisions as part of its Constitution. These provisions deal with a range of procedural and other matters, and are reproduced at Appendix 7.

7.15 Members are reminded that certain parts of the Appendices have already been agreed by Council at its earlier meetings. However, these are

reproduced in order to provide a comprehensive record for Members of the Council.

7.16 Finally, it should be noted that the appended documents will need to be refined to provide information for the benefit of the public and the organisation. Some arrangements are still developing, which will need to be added under officer delegated powers eg:

- the need for hyperlinks to be added, where possible, to guide enquirers to appropriate points of contact;
- details of the full officer and decision-making structure;
- information on policies as they develop and are adopted.

## **8.0 Conclusion**

8.1 The appendices to this report represent a great amount of work by Members of the Council, and by officers.

8.2 The work of the Governance and Constitution Committee, and of Council, will continue in refining the Constitution to meet the needs of the Council. This document should therefore be regarded as a “living document” which will change from time to time, as required by Council.

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### ***For further information:***

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### ***Background Documents:***

- *Reports to Governance and Constitution Committee*
- *Minutes of the above Committee*
- *Modular Constitution document produced by the Government Department*
- *Constitutions of Cheshire local authorities and those of other authorities nationally*

*Documents are available for inspection at:*

*The Shadow Council Support Office  
Congleton Borough Council  
Westfields  
Middlewich Road  
Sandbach, CW11 1HZ*

